

REMARKS

Claims 1-73 are pending in the captioned Application in which claim 58 is amended hereby, and in which the Examiner has required an election of species.

Election of Species:

The Examiner has required an election of species from among the following four alleged species:

- | | |
|-------------|----------------|
| Species (1) | Figures 1-4 |
| Species (2) | Figures 5-6 |
| Species (3) | Figures 7-9 |
| Species (4) | Figures 10-11. |

Applicant hereby elects to initially prosecute the specie of Figures 10-11, Species (4), and respectfully traverses the election requirement.

In accordance with the foregoing election with traverse, Applicant hereby identifies claims 1-2, 4-34, 47-49, 50-55, 57-59 and 60-63 as reading on the elected specie of Figures 10-11. Specifically, claims 1-2, 4-7, 9-12, 27-29, 31-33, 47-49, 54-55, 57-59 and 63 read on the elected specie of Figures 10-11, and claims 8, 13, 14-21, 22-26, 30, 34, 50-53 and 60-62 read on the elected specie of Figures 10-11 disposed in the bore of a metal member.

In addition, at least claims 1-2, 4-7, 9-12, 14-20, 22-27, 31, 47-49, 54-55, 57-59 and 63 also read on the specie of Figures 7-9 and so are generic with respect to the species of all of Figures 7-9 and 10-11.

Because the above claims are generic, and further because all of independent claims 1, 9, 14, 22, 27, 31, 47 and 57 are generic with respect to all of Figures 7-9 and 10-11, it is quite likely that an allowable generic claim will be found in the present Application, and so all of claims 1-73 should be examined with the elected specie in the present Application.

All of claims 1-73 read on the light source assemblies of the species of Figures 7-11. Examining all of pending claims 1-73 will not significantly increase the scope of the search the Examiner must perform, and will not increase the burden on the Examiner, beyond that to properly search and examine the claims reading on the elected specie of Figures 10-11.

Applicant's response herein provides reasons overcoming the rebuttable presumption

accorded the Examiner for making a *prima facie* explanation in an *initial* restriction requirement (the reason behind restriction being similar to that behind election of species) and the requirement should be withdrawn. MPEP §803.

In this case, because “search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits, even though it contains claims to independent and distinct inventions.” MPEP §803 (emphasis added).

“It still remains important ... that no requirements be made which might result in the issuance of two patents to the same invention.” MPEP §803.01.

Applicants note that features shown in various ones of non-elected species of Figures 1-6 of the present Application are the subject of U.S. Patents 6,402,340, 6,491,409, 6,811,280, & 6,857,758, and of allowed U.S. Patent Application No. 10/238,747, each of which includes Figures 1-4 or Figures 1-6. It is submitted that none of the claims of the present Application read on the embodiments shown in any of Figures 1-6.

U.S. Patent Application No. 10/238,807 which has matured into U.S. Patent No. 6,857,758 entitled SOLID STATE LIGHT SOURCE, AS FOR A FLASHLIGHT, and U.S. Patent 6,491,409, were cited in the Information Disclosure Statement filed with the present Application in September 2003.

Accordingly, withdrawal of the election requirement is proper as to the species of Figures 7-9 and Figures 10-11, and examination of all of claims 1-73 of Species (3) and (4) should be undertaken in the present Application. Such action is hereby solicited.

Preliminary Amendment:

Figure 11 is amended to correct three numerical designators therein to be consistent with the specification at page 17, lines 19-30, which supports the amendment. Because the change is simple and is clear from the description herein, a marked-up figure is not required. A replacement drawing sheet including Figures 10 and 11 with the amendment of Figure 11 incorporated therein is submitted herewith in a paper directed to the Official Draftsperson.

Claim 58 is amended to correct a typographical error that resulted in an omitted word. This amendment does not narrow the scope of any claim element or limitation and so is not

limiting of any claim element or limitation, and Applicant reserves the right to the benefit of the doctrine of equivalents with respect thereto.

Supplemental Information Disclosure Statement:

Pursuant to 37 C.F.R. §1.97(c), Applicant cites the items listed on Form PTO-1449 submitted herewith and encloses a copy of each such item that is not a U.S. Patent or a U.S. Patent Publication. Because a requirement for election of species is not an action on the merits (MPEP §810), the accompanying Information Disclosure Statement is submitted before the mailing of a first action on the merits and no fee is believed due.

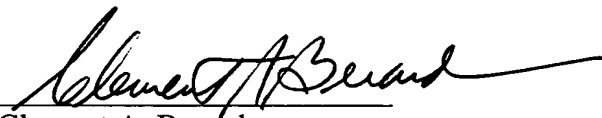
Conclusion:

Applicant respectfully requests that the election of species requirement be reconsidered in light of the foregoing and that the Application including claims 1-73 be examined and allowed.

The number of claims remaining being the same or less than as the number previously paid for, no fee is due in consequence of this response. However, should a fee be due in consequence of this response, please charge such fee to Deposit Account 04-1406.

The Examiner is requested to telephone the undersigned attorney if there is any question or if prosecution of this Application could be furthered by telephone.

Respectfully submitted,
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AMENDMENT TO THE DRAWING

Please amend the drawing as follows:

FIGURE 11 –

Along the bottom of Figure 11, change the numerical designators as follows:

change "120" to -120"-,

change "11" to -112-, and

change "1" to -110-.